

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ALAN ROSS MACHINERY CORPORATION,)	
)	
Plaintiff,)	Case No. 17-cv-3569
)	
v.)	Hon.
)	
MACHINIO CORP.,)	Magistrate Judge
)	
Defendant.)	

COMPLAINT

Plaintiff, ALAN ROSS MACHINERY CORPORATION, by and through its attorneys, for its Complaint against Defendant, MACHINIO CORP., alleges as follows:

INTRODUCTION

1. This case arises out of Defendant, Machinio Corp. (“Machinio”), illegally and without authority, using “web scraping” techniques in order to pilfer valuable content from Plaintiff, Alan Ross Machinery Corporation’s (“Alan Ross Machinery”), website and to distribute that valuable content on Machinio’s website as if that content were its own.
2. Machinio’s wrongful conduct includes the illegal and unauthorized access of Alan Ross Machinery’s protected computer network, Machinio’s “reverse passing off” of Alan Ross Machinery’s products as Machinio’s products and Machinio’s breach of Alan Ross Machinery’s website terms and conditions.
3. Upon information and belief, Machinio is utilizing the same “web scraping” technique to steal valuable content from other websites throughout the country.
4. Through this lawsuit, Alan Ross Machinery seeks damages from Machinio for Machinio’s wrongful conduct, including but not limited to compensatory and statutory damages, plus treble and exemplary damages as allowed by law.

PARTIES

5. Plaintiff, Alan Ross Machinery, is an Illinois corporation whose principal place of business is located in Northbrook, Cook County, Illinois. Alan Ross Machinery is North America's largest vendor of used and new scrap processing and recycling equipment.

6. Defendant, Machinio, is a Delaware corporation. Upon information and belief, Machinio's principal place of business is located in Chicago, Cook County, Illinois.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 because this action alleges violations of federal statutes, including the Lanham Act, 15 U.S.C. § 1125(a) and the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*

8. Pursuant to 29 U.S.C. § 1367, this Court has supplemental jurisdiction over the remaining claims alleged herein.

9. Pursuant to 28 U.S.C. § 1391(b)(1) and (2), venue is proper in this District because Machinio operates its business in this Judicial District and the computer servers that Alan Ross Machinery operates are also located within this Judicial District, thus a substantial part of the events or omissions giving rise to the claim occurred herein.

10. In addition, as a user of Alan Ross Machinery's website, Machinio consented to Alan Ross Machinery's terms and conditions, www.alanross.biz/terms, a true and correct copy of which is attached hereto as **Exhibit A**, which provide, among other things:

You, as user of this website, irrevocably and unconditionally agree not to commence any action, litigation or proceeding of any kind whatsoever, whether in law or equity, or whether in contract or tort or otherwise, against Alan Ross Machinery Corporation in any way relating to the use of this website or the transactions contemplated hereby in any forum other than the courts of the State of Illinois sitting in Cook County, Illinois and of the United States District Court for the Northern District of Illinois, and any appellate court from any thereof, and the parties hereto irrevocably and unconditionally submit to the jurisdiction of such courts and agree that any such action, litigation or proceeding may solely and exclusively be brought in any such Illinois State court or, to the fullest extent permitted by applicable law, in such federal court. You, as user of this

website, also agree that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(Exhibit A.)

FACTS COMMON TO ALL COUNTS

A. Web Scraping

11. Web scraping, also known as web harvesting or web data extraction, is data scraping used for extracting data from websites using automated “bots” or “spiders.” It is a process whereby an automated piece of software extracts data from a website by “scraping” through the site’s many pages.

12. Alan Ross Machinery recognizes that web scraping and other reproduction of works from its website can occur and that said web scraping and reproduction of Alan Ross Machinery’s website can be damaging to Alan Ross Machinery.

13. As a result thereof, Alan Ross Machinery’s website terms and conditions provide:

THE FOLLOWING DESCRIBES THE TERMS ON WHICH ALAN ROSS MACHINERY CORPORATION OFFERS YOU ACCESS TO OUR WEBSITE

...

2. You may not copy, reproduce, modify, create derivative works from, nor distribute content from this site without our prior written consent; and reproductions and derivatives are available for \$500 US Dollars per asset.

(Exhibit A.)

B. Machinio’s Wrongful Conduct

14. Machinio is one of Alan Ross Machinery’s direct competitors in the scrap processing and recycling equipment business and maintains a publicly accessible website at www.machinio.com.

15. According to its website, “Machinio is a global search engine for finding used machinery and equipment. Our comprehensive database contains more active machinery listings than any other website.”

16. Between September 27, 2016 and October 24, 2016, Alan Ross Machinery’s President (Rustin Ross) and Machinio’s Partner and Director of Sales (Steve Glod) discussed Alan Ross Machinery using Machinio’s website to list certain Alan Ross Machinery content for sale on Machinio’s website.

17. However, Alan Ross Machinery ultimately elected not to utilize Machinio for that service.

18. As a result, Alan Ross Machinery expressly demanded that Machinio not scrape Alan Ross Machinery’s website.

19. Nevertheless, at some time after October 24, 2016 but prior to March 20, 2017, Machinio employed unlawful web scraping techniques to extract valuable Alan Ross Machinery content from Alan Ross Machinery’s website.

20. On or about March 20, 2017, approximately 2,000 of Alan Ross Machinery’s assets (“Assets”) were identified on Machinio’s website. Some of those Assets are identified on the Machinio web pages attached hereto as **Exhibit B**.

21. At no time prior to, during or after Machinio reproducing Alan Ross Machinery’s Assets on its website, did Machinio receive prior consent or permission, written or otherwise, from Alan Ross Machinery to use any of the information on Alan Ross Machinery’s website.

22. As of the filing of this Complaint, the Assets still show up on Google searches with links to Machinio’s website. A true and correct copy of a recent Google search webpage is attached hereto as **Exhibit C**.

COUNT I
VIOLATIONS OF THE LANHAM ACT – 15 U.S.C. § 1125(a)

23. Alan Ross Machinery incorporates paragraphs 1 through 22 as though fully alleged herein.

24. Alan Ross Machinery's website presents users of the website with several web pages which contain both copyrightable and non-copyrightable portions, and constitutes valuable Alan Ross Machinery product, including but not limited to the Assets.

25. Each webpage presented to users of Alan Ross Machinery's website contains Alan Ross Machinery's copyright symbol.

26. Machinio's unauthorized use of Alan Ross Machinery's Assets on Machinio's website constitutes an attempt to palm off and misappropriate Alan Ross Machinery's exclusive rights with respect to the Assets and other valuable product contained on Alan Ross Machinery's website.

27. Machinio's use of the Assets on its website is likely to cause confusion as to the affiliation, connection or association of Machinio with Alan Ross Machinery, or as to the origin, sponsorship, or approval of Machinio's goods, services or commercial activities by Alan Ross Machinery.

28. Machinio's conduct therefore constitutes a false designation of origin, false or misleading description of fact, or false or misleading representation of fact which is likely to cause confusion or mistake, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

29. Machinio engaged in such false designation of origin knowingly, willfully, deliberately and in conscious disregard of Alan Ross Machinery's rights, making this an exceptional case within the meaning of 17 U.S.C. § 1117(a).

30. By reason of the foregoing, in addition to actual damages, Alan Ross Machinery is also entitled to its reasonable attorneys' fees from Machinio if Alan Ross Machinery prevails on this claim.

WHEREFORE, Plaintiff, ALAN ROSS MACHINERY CORPORATION, prays that this Honorable Court enter judgment in its favor and against Defendant, MACHINIO CORP., for damages to be determined at trial, plus treble damages pursuant to the Lanham Act, exemplary damages due to Machinio's willful and malicious conduct alleged above, and such other and further relief as this Court may deem just and proper.

COUNT II

VIOLATIONS OF THE COMPUTER FRAUD AND ABUSE ACT – 18 U.S.C § 1030 *Et Seq.*

31. Alan Ross Machinery incorporates paragraphs 1 through 22 as though fully alleged herein.

32. Alan Ross Machinery's computers and servers are involved in interstate and foreign commerce, and are protected computers under the Computer Fraud and Abuse Act, 18 U.S.C § 1030.

33. Upon information and belief, Machinio knowingly and intentionally accessed Alan Ross Machinery's computers and/or servers without authorization and in circumvention of the technical barriers that Alan Ross Machinery employs.

34. After gaining unauthorized access to Alan Ross Machinery's computers and/or servers, Machinio used valuable information it had obtained from Alan Ross Machinery's protected computers and/or servers in transactions involving interstate or foreign commerce in violation of 18 U.S.C § 1030(a)(2).

35. Machinio, knowingly and with intent to defraud, accessed Alan Ross Machinery's protected computers and/or servers without authorization, and by means of such conduct furthered the intended fraud and obtained valuable information from Alan Ross Machinery's computers and/or servers.

36. As a direct and proximate result of Machinio's violations of the Computer Fraud and Abuse Act, Alan Ross Machinery has been harmed.

WHEREFORE, Plaintiff, ALAN ROSS MACHINERY CORPORATION, prays that this Honorable Court enter judgment in its favor and against Defendant, MACHINIO CORP., for damages to be determined at trial and such other and further relief as this Court may deem just and proper.

COUNT III
BREACH OF CONTRACT

37. Alan Ross Machinery incorporates paragraphs 1 through 22 as though fully alleged herein.

38. Use of Alan Ross Machinery's website is governed by and subject to Alan Ross Machinery's terms and conditions.

39. By web scraping Alan Ross Machinery's website in order to reproduce Alan Ross Machinery's Assets which ended up being reproduced on Machinio's website, Machinio consented to the terms and conditions contained on Alan Ross Machinery's website.

40. The following provision is included among those terms and conditions: "**You may not copy, reproduce, modify, create derivative works from, nor distribute content from this site without our prior written consent; and reproductions and derivatives are available for \$500 US Dollars per asset.**"

41. Upon Alan Ross Machinery becoming aware of Machinio reproducing approximately 2,000 of Alan Ross Machinery's Assets on Machinio's website, and since Alan Ross Machinery had not consented to said reproduction in writing or otherwise, Alan Ross Machinery demanded that Machinio remove Alan Ross Machinery's Assets from Machinio's website.

42. Although Machinio ultimately removed the Assets from its website, Machinio has failed to pay Alan Ross Machinery \$500.00 per Asset, or any sum, for Machinio's unauthorized use of Alan Ross Machinery's Assets.

43. The terms and conditions contained on Alan Ross Machinery's website are binding on Machinio.

44. Alan Ross Machinery has performed all conditions required of it in accordance with its terms and conditions.

45. Machinio's breach of Alan Ross Machinery's terms and conditions caused damages to Alan Ross Machinery.

46. Alan Ross Machinery is therefore entitled to damages from Machinio as a result of Machinio's breaches.

WHEREFORE, Plaintiff, ALAN ROSS MACHINERY CORPORATION, prays that this Honorable Court enter judgment in its favor and against Defendant, MACHINIO CORP., for the sum of \$1,000,000.00 and such other and further relief as this Court may deem just and proper.

COUNT IV
UNJUST ENRICHMENT

47. Alan Ross Machinery incorporates paragraphs 1 through 22 as though fully alleged herein.

48. Machinio presented Alan Ross Machinery's website content, specifically the Assets, on Machinio's website as Machinio's own, all with the purpose of harming Alan Ross Machinery's business and profiting from the stolen content.

49. Machinio had thus derived a benefit from its unlawful, unauthorized and willful web scraping and copying of Alan Ross Machinery's Assets from Alan Ross Machinery's website.

50. Machinio has accepted and retained the benefits of its unlawful and unauthorized scraping, copying and use of Alan Ross Machinery's Assets which render it inequitable for Machinio to retain those benefits to Alan Ross Machinery's detriment without payment to Alan Ross Machinery.

WHEREFORE, Plaintiff, ALAN ROSS MACHINERY CORPORATION, prays that this Honorable Court enter judgment in its favor and against Defendant, MACHINIO CORP., for damages to be determined at trial and such other and further relief as this Court may deem just and proper.

COUNT V
TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE

51. Alan Ross Machinery incorporates paragraphs 1 through 22 as though fully alleged herein.

52. Alan Ross Machinery markets the Assets to existing and prospective customers on Alan Ross Machinery's website.

53. At all relevant times, Machinio knew of Alan Ross Machinery's website and its marketing the Assets on that website.

54. Nevertheless, Machinio wrongfully and tortiously interfered with Alan Ross Machinery's relationships with prospective purchasers of the Assets by republishing the Assets on the Machinio website as if the Assets belonged to Machinio.

55. Machinio's republishing of the Assets on its website harms Alan Ross Machinery's placement and ranking on internet search engines such as Google, thereby materially diminishing traffic to Alan Ross Machinery's website.

56. Machinio's actions were unauthorized, intentional and without justification.

57. Alan Ross Machinery has been and continues to be damaged as a direct and proximate result of Machinio's actions.

WHEREFORE, Plaintiff, ALAN ROSS MACHINERY CORPORATION, prays that this Honorable Court enter judgment in its favor and against Defendant, MACHINIO CORP., for damages to be determined at trial and such other and further relief as this Court may deem just and proper.

Respectfully submitted,

ALAN ROSS MACHINERY CORPORATION

By: /s/ John M. Sheldon
One of Its Attorneys

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